

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

## **PERFORMANCE PULSATION CONTROL, INC.**

**CASE NO. 4:17-cv-00450**

V.

**SIGMA DRILLING TECHNOLOGIES,  
LLC, INTREPID CONSULTING, LLC,  
JUSTIN MANLEY, ALLISON  
MANLEY, WILLIAM GARFIELD, and  
PAMELA GOEHRING-GARFIELD**

**Judge: Hon. Amos L. Mazzant, III**

## Defendants.

**DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF MANLEY AND  
GARFIELD'S MOTION FOR PARTIAL SUMMARY JUDGMENT (DKT. # 167)**

Defendants Justin Manley and William Garfield file this Supplemental Brief in Support of their Motion for Partial Summary Judgment as follows:

The Court set November 12, 2018 as the deadline to file dispositive motions and supporting evidence. (Dkt. No. 178). Movants timely filed their summary judgment motion on July 13, 2018. (Dkt. No. 167). Subsequent to the filing of that motion and Plaintiff's response, Defendants' client provided a copy of a transcript of an evidentiary hearing conducted on July 29, 2016 and which was continued on August 10, 2016 in the 416<sup>th</sup> Judicial District Court of Collin County, Texas. Although Plaintiff was represented by the same counsel, Movants were represented by separate counsel. Movants believe that this additional evidence constitutes a dispositive judicial admission as pertains to Docket No. 167. For this reason, the Court should consider supplemental evidence consisting of the transcript of that evidentiary hearing.

The contract is important because Plaintiff contends that it is this “contract” that renders the “acquisition” of PPC “trade secrets” improper and serves as the basis for the prosecution of other claims of improper taking of *confidential*, but not “trade secret” information as well as allegations pertaining to alleged non-competition obligations. The testimony of PPC’s corporate representative expressly rejects the position now taken by PPC in both its pleadings and its response to Movants’ motion. (Dkt. # 171). Additionally, this testimony occurred in an evidentiary hearing before Plaintiff instituted the current suit and demonstrates pre-suit acknowledgment that Defendants were bound by no contractual obligations.

“Q Now, that says, “Policies set forth in this handbook are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contracted employment between PPC and any of its employees.” Did I read that correctly?

A Yes, you did.

Q So you understand that the employee handbook is not a contract between PPC and anyone; isn’t that right?

A It is not an employment contract.

Q It’s not any kind of contract, is it?

A Yes.

Q Yes, it is not a contract?

A Correct.”

(Exhibit E, p. 25:4-25).

Gary Brown testified as the corporate representative of PPC, not as a non-party witness outside PPC’s control. (Exhibit D). Brown’s knowledge is imputed to PPC. *See Askanase v. Fatjo*, 130 F.3d 657, 666 (5th Cir. 1997) (recognizing under Texas law the “general rule that

courts are to impute an officer/director's knowledge to the corporation."). Consequently, his testimony regarding PPC's claims against Movants cannot operate as a surprise to PPC.

### **III. Conclusion**

William Garfield and Justin Manley respectfully request the Court consider this supplemental brief and evidence in support of Docket No. 167. Movants further ask for general relief.

Respectfully submitted,

/s/ Gregory N. Ziegler

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2018, the foregoing pleading was filed with the clerk of the court for the U.S. District Court, Eastern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of documents by electronic means.

*/s/ Gregory N. Ziegler*  
**Gregory N. Ziegler**

**CERTIFICATE OF CONFERENCE**

The undersigned counsel certifies that counsel conferred with counsel for PPC on November 19, 2018 regarding the relief requested herein and that counsel for PPC informed the undersigned that PPC will oppose the motion. On that basis, Alison Manley and Garfield present this motion to the Court as opposed.

*/s/ J. Robert Skeels*  
**J. Robert Skeels**